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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

OCT - 5 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re:

Eligibility for the Specialized Mobile)
Radio services and Radio Services in)
the 220-222 Mhz Land Mobile Band and) GN Docket No. 94-90
Use of Radio dispatch Communications)

To: The Commission

COMMENTS OF SMR WON

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SUMMARY OF ARGUMENT

SMR WON is a new trade association organized in September, 1994 to protect the interests of independent SMR licensees. In one month SMR WON already has 33 members from fourteen states, and is growing rapidly.

Wireline Entry Into SMR. Entry of wireline carriers into SMR should not be permitted except as part of comprehensive legislation examining non-wireline entry into the wireline's core businesses. Wireline carriers were responsible for scrapping S. 1822, and blocking competitor's entry into their monopoly local businesses. The wireline industry's overwhelming market power would drive small independent operators out of business. FCC "safeguards" such as prohibiting cross subsidies, implementing separate accounting, providing equal access, and requiring separation, have proved ineffective in preventing the consolidation of the cellular telephone industry, or breaking up wireline monopolies. They would be ineffective here also.

Cellular Dispatch. Permitting cellular operators to provide dispatch service would similarly eliminate the only true price competition the cellular industry has. Cellular inroads into this market would eliminate small operators in the very markets where competition is needed most. Prices will rise and industry jobs will be lost.

Secondary status for dispatch does not prevent cellular domination of the market. Also, delaying implementation for two years does nothing to ensure that cellular market power will not

crush the independent SMR operators then. Digital technology must be readily available and widely implemented, so that SMR operators will have the capacity to offer other services if cellular moves into the dispatch market.

EXHIBIT 101-1/101A

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COMMENTS OF SMR WON

SMR WON, by its counsel, hereby files its comments in opposition to the FCC's proposal to permit wireline telephone companies to offer Specialized Mobile Radio ("SMR") service, and to remove the restriction on the offering of dispatch service by cellular telephone carriers.

I. SMR WON

SMR WON is a trade association representing independent SMR licensees throughout the nation (see Exhibit A). SMR WON was recently organized in response to recent proposals by the FCC, which would, through changed regulation, eliminate independent SMR dealers and thereby the only true price competition to the cellular telephone industry.

SMR WON was organized in September, 1994, to protect the interests of independent SMR licensees. SMR WON was organized to:

- Preserve small business competition in mobile radio:

- Ensure continued price competition to cellular;
- Protect quality service to rural areas and smaller metropolitan markets;
- Advance technological improvements and innovation;
- Ensure a ready supply of compatible and innovative equipment from competing manufacturers at affordable prices;
- Preserve existing employment and increase job opportunities in and for small businesses;
- Ensure continued growth opportunities for small SMR operators; and
- Educate the public about SMR's accomplishments, capabilities, and importance to the economy and the public interest.

SMR WON represents a significant segment of the SMR industry which has been completely ignored and overrun by more powerful, better heeled lobbying forces. The purpose of these and other comments is to reintroduce the Administration's economists, lawyers, and regulators to a successful, profitable, and economically viable mobile communications industry segment.

II. DESCRIPTION OF THE SMR SMALL BUSINESS INDUSTRY

Traditional SMR licensees serve approximately 1 million mobile radio users, including dispatch and interconnect customers.^{1/} These independent licensees operate primarily in the nation's smaller metropolitan markets and sparsely populated

^{1/} SMR serves a cross section of mobile radio users - professionals, construction delivery services, police, fire and ambulance, universities and colleges, sales forces, and business needs generally. An additional 600,000 customers are served by a single entity and its affiliates, Nextel. Nextel is not a member of SMR WON.

rural areas, many of which are not served adequately by cellular telephone service.

SMR licensees vary significantly in the ratio of dispatch to interconnected operations they provide. For example, one system in a major metropolitan market (Philadelphia, PA) is 97% dispatch and 3% interconnected service. The customers of an operator in a mid-sized Western State market (Boise, ID), are approximately 80% interconnect and 20% dispatch; the dispatch customer base would not be sufficient alone to sustain operations in Boise. In smaller metropolitan and rural markets the ratio between dispatch and interconnect customers varies considerably; generally, the mean ratio appears to be approximately 60% dispatch and 40% interconnect.

While dispatch service generally can sustain 70-100 mobiles per channel (the old loading criteria), interconnect service can sustain only 40 mobiles per channel during the two peak periods of the day. Thus, in the past, SMR operators providing substantial interconnect service have been penalized for providing interconnect service, since they could not meet the loading criteria at renewal time. Only if the SMR operator was located in a rural, non-wait listed area, could it keep its channels used primarily for interconnect.

In contrast, the cellular telephone industry serves approximately 20 million customers, with heavy concentration in the larger markets and metropolitan areas. SMR operators have

been able to remain profitable and viable in the face of such competition for three reasons:

Wireline Entry. First, the FCC has, on every previous occasion, determined that wireline operators should be ineligible to hold SMR licenses for competitive reasons.^{2/}

Cellular Prohibition on Dispatch. Second, the FCC has prohibited cellular telephone operators from offering dispatch service, including any transmissions on cellular frequencies that route service through a dispatcher.^{3/}

Small SMR Businesses Are Price Competitive. Third, small SMR operators provide mobile service at competitive rates, and in areas not adequately served by cellular telephone systems.

Northwest Wireless Network provides an important example of traditional SMR operators' competitiveness and innovation. Forty (40) SMR operators in Washington State, Oregon, Idaho, Montana, and Wyoming, who were precluded from obtaining wide area networks under the FCC's restrictive waiver requirements, have formed a corporation, Northwest Wireless Network, which will offer "roaming", i.e., networked voice and data services via a microwave and leased line backbone, to its customers throughout these states. Northwest Wireless is in Phase One of constructing

^{2/} See Second Report and Order, Docket No. 18262, 46 F.C.C. 2d 752, 760-761, 787 (1974), recon. Memorandum Opinion and Order, Docket No. 18262, 51 F.C.C.2d 945 (1975), aff'd sub nom., Util. Comm'rs v. F.C.C., 525 F.2d 630 (D.C. Cir. 1976), cert. denied, 425 U.S. 992 (1976.) [hereinafter Second Report and Order]

^{3/} Report and Order, GN Docket No. 87-390, 3 F.C.C. Rcd. 7033, 7042-43 (1988.)

network backbones from Canada to the California border, and others linking Seattle, Portland, Spokane, Kennewick, Pasco, Boise, ID, and other communities. Northwest Wireless currently is purchasing switches and other equipment and entering into the agreements necessary for construction. Northwest Wireless' business plans call for conversion from analogue to digital communications within one to two years after construction of the backbone.

Northwest Wireless has been constructed without assistance from the FCC's wide area waiver policies, and, indeed, was born out of frustration with the limited focus of the FCC's waiver policies. Northwest was advanced by the operators' interest in providing enhanced SMR services using the existing EF Johnson LTR communications format in which these licensees have substantial investments. The ability of Northwest Wireless to provide enhanced network service to the public is threatened by:

1. The FCC's short spacing rules for SMR;
2. The FCC's proposed auctions of SMR spectrum; and
3. The FCC's proposal in this Docket for wireline entry into SMR and to permit cellular dispatch.

Changing the regulatory environment can spell disaster for the small operator.

III. THE FCC SHOULD PRESERVE THE DUAL MARKET STRUCTURE AND SEPARATE ELIGIBILITY STANDARDS FOR SMR AND CELLULAR

In the 1970's the FCC set up a dual structure for the offering of mobile radio service in the 800 MHz band.^{4/} On the lower half of the band, the FCC permitted wide-area operations by SMR providers from cells operating at high elevations with significant power.

On the upper half of the band, the FCC provided for cellular service, i.e., low power, low elevation transmitters having comparatively small signal radius, hooked together by powerful computers and microwave links and permitting hand-off and "roaming". This worked well for congested metropolitan areas and for major interstate highways, given the speed and distance traveled by mobile units.

However, the capital investment necessary to operate such a vast system of cells, computers, and microwave links, led to the rapid consolidation of the cellular industry in the hands of the nation's largest LEC's, namely, the Regional Bell Operating Companies ("RBOCS"). Indeed, the wireline consolidation has continued, with the largest independent cellular operator, McCaw, having recently been purchased by the nation's largest provider of long distance telephone service, AT&T.

Under existing SMR technology, up to 20 channels could be "trunked" together, or connected, so that a mobile unit could operate on any available channel, thereby increasing channel

^{4/} Second Report and Order, supra, at note 2 (1974).

capacity. See generally Section 90, Subpart S of the Rules (47 C.F.R. 90.600 et seq.) This has worked well for the offering of fleet and dispatch service in the metropolitan areas, and for the offering of dispatch and interconnected service in smaller market and rural areas not served by cellular.

The FCC's separate regulatory structures for cellular and SMR has proven successful in providing competing service at affordable prices. It has also prevented the complete consolidation of all mobile radio service in the hands of a few large, publicly held corporations, because smaller businesses have been able to afford to construct and operate the SMR systems, and compete successfully.

Because the capital investment in a single trunked SMR operation is approximately \$50,000 per five channel pairs, as opposed to the average \$650,000 per cell site for cellular, the economics of SMR operation result in monthly customer bills on an average of \$10.00-\$18.00 per month for similar air time. In contrast, the average monthly cellular bill is \$58.00 per month.^{5/} In addition, the much higher cellular capital costs generally have limited effective cellular system coverage to the more densely populated major metropolitan areas and their interstate arteries. Cellular coverage in rural, agricultural, highly forested, and mountainous areas generally has been spotty and unreliable, and SMR has adequately served those area's needs for mobile service.

^{5/} RCR Magazine, September 19, 1994.

Thus, SMR has continued to compete effectively with cellular operators. Indeed, traditional SMR operators have been providing the only true competition to the cellular market duopoly on price and service.^{6/} This was no accident; The FCC itself created this dual economic structure only a few years ago.^{7/} Now, for patently futuristic and unsound reasons, including uncertain, unspecified and unsupported economic musings, the FCC is seeking in this and other related proceedings to dismantle and destroy the only price competitor to the cellular duopoly, and to increase cellular's market power.

Traditional SMR operators have for many years provided service in areas which only recently have become attractive to other operators. They did not engage in rampant frequency speculation. They have met their market's needs for service, and

^{6/} It is uncertain that the largest SMR operator will continue such price competition. Nextel's pricing practices in Los Angeles, and its public statements in its most recent 10K filing with the Securities and Exchange Commission indicate that Nextel may not intend to or be able to engage in true price competition with cellular, because the economic investment required to construct its own cellular system will require that it charge the higher cellular prices to the public as well.

^{7/} The basic SMR structure was established in 1974. SMR was only permitted the right to interconnect on a not-for-profit basis in the 1980's. See Second Report and Order, Docket No. 20846, 89 F.C.C. 2d 741, 752-53 (1982); recon. granted in part, clarified 93 F.C.C. 2d 1111 (1983); recon. 56 RR2d 684 (P&F)(1984) (interconnection allowed if obtained on a non-profit cost shared basis). SMR is still a new and developing industry; it is not a mature and powerful industry as the Commission in this docket would characterize it. In fact, the Commission recently acknowledged that fact -- "we are persuaded that the wireline limitation serves a useful purpose. Recent trends in the SMR service reflect that private carrier land mobile providers have begun to emerge as innovative and viable competitors to common carrier land mobile offerings." Order, PR Docket No. 86-3, 7 F.C.C. Rcd. 4398 (1992) (Termination Order)

have been innovative and price competitive in doing so. They employ highly skilled technicians and provide many jobs in smaller metropolitan markets and rural areas.

**IV. NO CHANGE IN THE WIRELINE RESTRICTION ON SMR SHOULD BE
MADE EXCEPT AS PART OF COMPREHENSIVE LEGISLATION
ADDRESSING THE MONOPOLY POWER OF THE LECs**

The local exchange wireline carriers control a substantial segment of the two-way voice communications market, and over half of the cellular mobile telephone market. Both indicia of control approach, if not surpass, the classic antitrust definitions of monopoly power, and duopoly power, employed by the courts and administrative agencies.^{8/}

Senate telecommunications legislation (S. 1822) in this year's Congress was designed to address comprehensively the role of the local exchange carriers in the provision of voice, data, and video services. Having passed the House of Representatives by an overwhelming margin, this important legislation was killed in the Senate by the RBOCs who refused to give up their monopoly power over local telephone service:

The telephone companies salivate over getting into the cable business and the long-distance business. They are seemingly against letting

^{8/} The Supreme Court has defined monopoly power as "the power to control prices or exclude competition... The existence of such power may be inferred from the predominant share of the market." United State v. Grinnell, 384 U.S. 563, 571 (1966). Cellular operators have exhibited the ability to keep prices at high levels, and cellular's markets share is twenty (20) times that of their closest competitor.

anyone challenge their monopoly over local telephone service.^{9/}

The telecommunications bill was killed Friday when Sen. Ernest Hollings (D., S.C.) angered by stubborn opposition from the Baby Bells, pulled the plug.^{10/}

Democratic leaders in the House, Senate, and Administration were virtually unanimous in blaming the RBOCs for scuttling this comprehensive legislation.^{11/} Failure to pass this legislation was a substantial blow to the Administration a few short weeks before general elections, a factor clearly not lost on the RBOCs.

Nevertheless, in this proceeding, the same wireline companies ask for still more control over two-way mobile voice communications, without any comprehensive plan to permit greater effective competition within the wireline industry.

Wireline SMR entry should only be considered as part of comprehensive legislation on access to the LEC monopoly. The wireline industry should not be given greater eligibility in this competing sector while it remains intransigent on entry issues affecting its own core business.

SMRs compete locally with the telephone companies for business, and the danger that LECs can use their local monopoly power and financial strength, notwithstanding accounting

^{9/} Rep. Edward Markey (D. Mass.), Chairman, House Telecommunications Subcommittee, "Markey Blames RBOCs for Killing," Broadcasting Magazine, October 3, 1994, at p. 42.

^{10/} Wall Street Journal, "Telecommunications Bill's Death Knell Hurts Baby Bells the Most, Analysts Say," Sept. 26, 1994, p. A.3.

^{11/} "Bingaman - Consumers Lose on Death of Telecommunications Legislation," Communications Daily, September 27, 1994, p.2.

"safeguards" and cross subsidy prohibitions,^{12/} is greater than the service advantages to be gained. Certainly, the SMR industry would receive no offsetting competitive advantage as a result of allowing wireline entry in this proceeding.

V. IT IS UNLAWFUL AND INAPPROPRIATE FOR THE COMMISSION TO CONSIDER THE ABILITY OF THE LECs TO BID FOR THE SMR SPECTRUM BLOCKS AT AUCTION

In a separate proceeding,^{13/} the FCC has proposed to create four (4), fifty-channel spectrum blocks in the SMR band and auction them off to the general public. The effect of this proceeding would be to broaden the pool of potential bidders for those frequency blocks.

This prospect is not lost on the Commission. In this NPRM, the FCC has given the following as a reason for permitting entry:

We also observe that future auctions of SMR spectrum could provide additional opportunities for small business entry into SMRs through competitive bidding incentives established for small businesses, minorities and rural telephone companies.^{14/}

Congress has prohibited the Commission from considering fund raising a public interest consideration in its auction

^{12/} LECs financial strength would permit them to make loans to a separately incorporated financial arm, or through guaranteeing loans from third party institutions. Absent eligibility restrictions, the FCC has been unable and unwilling to stop the financial strength of the LECs to dominate even larger segments of the cellular telephone industry, for example.

^{13/} Third Report and Order in General Docket 93-252, adopted August 9 (released September 23, 1994).

^{14/} NPRM, slip op. at 14.

proceedings.^{15/} While on the one hand de-emphasizing the use of LEC market power to crush a "relatively small" industry,^{16/} the Commission otherwise relies on that market power as a plus in raising money for the Treasury.^{17/} This is an unlawful and impermissible consideration.

**VI. WIRELINE RESTRICTIONS MUST CONTINUE TO ENSURE
COMPETITION AND PREVENT FURTHER CONCENTRATION OF MOBILE
RADIO IN TELEPHONE COMPANY HANDS**

The dominance of wireline carriers in the 1970's led the Commission to prohibit wireline entry into SMR as "consistent with promoting competition in the fledgling SMR industry." NPRM at para. 5. This prohibition was designed to:

ensure that SMRs would be available as a business opportunity for small entrepreneurs and to reduce incentives for wireline carriers to engage in discriminatory interconnection practices.

NPRM at para. 5, citing Termination Order. As recently as 1991 the FCC adopted the same rationale for the 220-222 MHz service.^{18/} Then again, two years ago, in 1992, the FCC decided to continue the prohibition on wireline entry into SMR so as "to

^{15/} 47 U.S.C. 309(J) (1993).

^{16/} See NPRM at para. 18, and para. 21.

^{17/} NPRM at para. 23.

^{18/} Order, PR Docket No. 89-552, 6 F.C.C. Rcd. 2356 (1991), recon., 7 F.C.C. Rcd. 4487 (1992.)

preserve a climate favorable to the continued development of private land mobile competitors."^{19/}

What has changed since the FCC's conclusion as recently as 1992 that the wireline entry would not preserve the continued development of the SMR industry?

The change, essentially, is political, and the new political message is ambiguous at best. When Congress passed the Regulatory Parity and auction amendments in August, 1993, included was a provision which gave the Commission permission to review the restriction on wireline entry into SMR.^{20/} Congress did not require the FCC to change its position, since Congress itself could reach no consensus on whether the restriction should be lifted. It appears that further reconsideration of the wireline entry restriction was a quid pro quo for requiring the wireline industry to purchase PCS frequencies at auction, as this same legislation initiated.

The FCC was given permission, and nothing more, to review this issue. Business competition in the mobile radio industry has not changed the reasons for the original prohibition.

Risk of Competitive Harm. The FCC states that the "risk of competitive harm has diminished." The Commission recites that the breakup of AT&T, and rapid growth in mobile services:

have combined to create an environment in which wireline carrier participation in mobile services, including participation by

^{19/} Termination Order at 4399

^{20/} See 47 U.S.C. 332(c)(2) (1993).

the post-divestiture BOCs, has the potential to increase competition rather than impede it.

This is a decidedly weak statement, unsupported by any evidence that the underlying economic factors have changed. Even the Commission is not sure. Let's examine the "current environment", as the Commission calls it, in mobile radio.

The cellular telephone market has been characterized by increased consolidation and the absence of true price competition since licenses were first issued in the 1980's. Independent operators on the non-wireline blocks generally have been selling out to RBOCs desiring to offer cellular telephone service outside their wireline areas. In the most graphic of recent consolidations, the largest independent cellular operator, McCaw Communications, within the last month completed its merger with AT&T, and is now known as AT&T McCaw Cellular.

Marketplace experience is the best predictor of future activities, not unsophisticated ruminations about the "breakup of AT&T" and the "rapid growth of mobile services". Since the last time the FCC examined this issue in 1992, the mobile marketplace has become more and more consolidated, notwithstanding the "breakup of AT&T" or the "growth in mobile services". Indeed, AT&T through the McCaw merger is now the second or third largest provider of mobile radio services in the nation.

The wireline telephone industry will continue to consolidate its grip on the mobile services industry if allowed into SMR. The FCC has recognized this in other contexts and taken steps to

prevent it. The wireline carriers are prohibited from offering PCS service in markets where they provide 10% or more of the population with cellular service.^{21/} Similar prohibitions are appropriate here if any wireline entry is permitted.

Small Telephone Company Eligibility. The smaller independent telephone companies are no less a threat to the independent SMR provider. Their entry will not "increase the number of small business participants in the service", as predicted in the NPRM. Their entry would be at the expense of the existing small business SMR operator. Wireline's access to customers in their LEC area, their embedded plant, their ability to cross-subsidize or finance their mobile operations from affiliate finance companies or third party lending institutions is far superior to the average independent SMR operator's resources. No combination of "safeguards" would protect against such financial power if wireline entry were permitted.

SMR WON is amazed at the sudden penchant of the Commission to give the wireline industry virtually every opportunity to monopolize and consolidate the mobile radio business, at the expense of independent small business. The wirelines already dominate cellular, which has close to 20 times the subscribership of SMR; the wirelines have been given the ability, cross-market, to own PCS outright, and the ability to invest as passive investors in the PCS Designated Entity Blocks C and F. The

^{21/} Second Report and Order, GN Docket No. 90-314, F.C.C. Rcd 7700, 7745 (1993) [hereinafter Broadband PCS Second Report and Order].

wirelines are also expected to dominate the PCS broadband auctions. It seems that virtually every pro-competitive rationale, embraced by the Commission in 1992, shortly before the passage of auction legislation, has been jettisoned now that the almighty dollar appears at the Government's auction doorstep. If there were any doubt about the FCC's intent, indeed, mandate from OMB, to raise money, it is dispelled in one of the weakest rationales advanced in this docket:

Future auctions of SMR spectrum could provide additional opportunities for small business entry into SMRS through competitive bidding incentives established for small businesses, minorities, and rural telephone companies.

NPRM at para. 23. Roughly translated, the FCC believes telephone companies, unlike other small businesses, might be able to bid at auctions, since the narrowband PCS auctions to date have been disastrous for small businesses.

Interconnection and Accounting "Safeguards". SMR WON believes that requiring LEC's to provide interconnection in the same manner provided to cellular, and accounting "safeguards" are not sufficient substitutes for continuing the eligibility restrictions.

First, these proposals overlook the real objective; promoting competition on price and service, and providing real opportunities for independent business entry and innovation. Independent SMR operators' average monthly bills for the same service run approximately 1/2 to 1/3 of comparable cellular prices in the same market.

The Commission has failed in this NPRM to analyze in any meaningful way the available industry information on price and service competition available to it. While the Commission has emphasized its reliance on economists to develop regulatory theory, it has so far failed, in this industry, to undertake any comprehensive analysis, or provide for public comment any study it may have done, on the independent SMR industry as it exists today.

The independent SMR operators are holding down cellular prices to the extent any mobile radio operators are; Wireline companies owning cellular licenses or providing telephone service in the same area as their SMR operations will have no incentive to price mobile radio as a bypass for the regulated LEC monopoly. There is no hard evidence on price, service, or use of market power that the Commission can cite in support of its theory that wireline entry will promote competition, while the FCC cases and rule making proceedings are full of instances where wireline telephone providers have discriminated on just such issues, including interconnection.

Whether the SMR business is "Sufficiently Well Established". The FCC advances the argument that the SMR industry is "sufficiently well established" to permit wireline entry. Let's look at the evidence.

First, the FCC admits, as it must, that "SMR operations today are still relatively small in comparison to cellular operations." SMR is only one-twentieth the size of the cellular

industry. However, the FCC desires to overlook this very significant evidence that the SMR industry is not "sufficiently well established."

The Commission observes that wirelines cannot make inroads on the major metropolitan markets, and that it would review "under its existing transfer and control rules" whether the assignment would confer market power on the assignee. NPRM at para. 21. The FCC has not undertaken to enforce the antitrust laws in transfer and assignment proceedings and, compared to the courts, has been unwilling to break up monopolies or regulate industry consolidation.^{22/}

VII. COMMON CARRIER DISPATCH PROHIBITION

A. Repeal of the Dispatch Ban Will Lead To the Destruction of the Traditional SMR Provider's Business, Inhibit Innovative Service Offerings and Lower Costs to the Public

Permitting cellular operators to provide dispatch would eliminate the only true price competition to the cellular industry. Permitting cellular market power into this segment also would eliminate small operators in the very markets where competition is needed the most.

Contrary to the Commission's tentative conclusions that repealing the ban on dispatch will lead to more innovative service offerings and lower costs for dispatch customers, the

^{22/} See United States v. AT&T, 552 F. Supp. 131 (D.C. 1982.) (Consent Decree).

history of the SMR industry indicates that repealing the ban will have exactly the opposite effect.

Anti-competitive concerns have always surrounded the issue of whether to allow the entry of common carriers into dispatch services.^{23/} Because of cellular operators' greater spectrum resources, allowing cellular services to provide dispatch services would have the devastating effect of stifling competition in the provision of dispatch services.

As recently as 1992, the Commission expressly recognized the ability of the SMR industry to provide quality competitive service to the public.^{24/} In addition, the Commission cited the lack of a complete industry analysis which would determine whether entry by common carriers would allow continued growth of private providers:

By retaining the wireline restriction at least until we have had an opportunity to evaluate fully the competitive potential of private land mobile services vis-a-vis common carrier and mobile providers, we will be able to preserve a climate favorable to the continued development of private and mobile competitors.^{25/}

^{23/} See Second Report and Order at 760-61; Report and Order, GN Docket No. 87-390, 3 F.C.C. Rcd. 7033, 7042-43; Termination Order at 4399.

^{24/} "Recent trends in the SMR service reflect that private carrier land mobile providers have begun to emerge as innovative and viable competitors to common carrier land mobile offerings." Order, PR Docket No. 86-3, 7 F.C.C. Rcd. 4398 (1992) (Termination Order)

^{25/} Termination Order at 4399.

To date, no such comprehensive comparison of the competitive potential of private land mobile services and common carrier providers has been initiated.

Because of its competitive cost and innovative service, and because the Commission has not yet evaluated the industry's impact on the marketplace, SMR operators should be given additional time to develop during the transition period and without the restrictive loading and other federal requirements which stifled their growth in the past. If cellular operators are allowed to provide dispatch services the small SMR operator will be forced out of the market just as competing wide-area network operations such as Northwest Wireless Network are getting started. In return for diminishing its core market, the Commission is not enhancing the ability of small SMR operators to grow in other markets.

As noted earlier, SMR providers are already being negatively affected by the warehousing of available SMR spectrum which is intended to be used for digital technology. SMR operators plan to convert to digital technology when the technology becomes commercially available. However, in the interim, SMR operators face the wait-lists, which are indicative of both the success of the SMR business and the regulatory problems SMR operators currently face. The wait lists leave SMR operators unable to expand their systems. Conversely, cellular providers will be able to take advantage of the larger spectrum allocations already at their disposal to target the SMR's customer base; given the

SMR operator's smaller spectrum allocations, the independent SMR operator will be at a disadvantage in offering multiple services to the dispatch customer, as the cellular operator can provide.

Depending upon the area in which the service is offered, some SMR providers currently are devoting as much as 97% of their service offerings to dispatch. Repealing the ban on cellular dispatch would destroy a significant portion of the traditional SMR provider's business and result in the inability of the public to choose an alternative service.

The Commission has in the past recognized that cellular operators already offer a "dispatch type" service through the cellular switch, which is sufficient to promote competition. Although not traditional dispatch service, cellular providers do have access to the dispatch customer who is free to choose this type of cellular service to fulfill their communications needs.^{26/}

However, if cellular operators are allowed to provide dispatch services, the practical result will be to drive the traditional SMR operator out of the marketplace and leave the consumer with no choice in the provision of dispatch or

^{26/} "It is evident that parties that normally engage in dispatch communications such as police and taxi companies may find cellular systems useful for certain communications and the Conferees did not intend to bar such parties from using cellular systems." Report and Order, GN Docket No. 870390, 3 F.C.C. Rcd. 7033, 7042. (1988.)